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OFFICE OF PETITIONS

In re Application of
Geoffrey N. Holland et al.
Application No. 10/783,648
Filed: February 20, 2004
Attorney Docket Number: 7135US07

ON PETITION

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513, filed April 14, 2005 and supplemented on June 8, 2006. The petition filed June 8, 2006 also pleads in the alternative to revive the instant application 37 CFR 1.137(b).¹

The petition under 37 CFR 1.181 is **DISMISSED**.
The petition under 37 CFR 1.137(b) is **GRANTED**.

The file record discloses that a Notice to File Missing Parts mailed May 13, 2004 was mailed to what was believed to be the address of record. However, petitioner contends that it was not received. In support of this contention, petitioner provides a copy of a docket record as well as a statement that a search of the file and docket records show that the Notice mailed May 13, 2004 was not received.

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

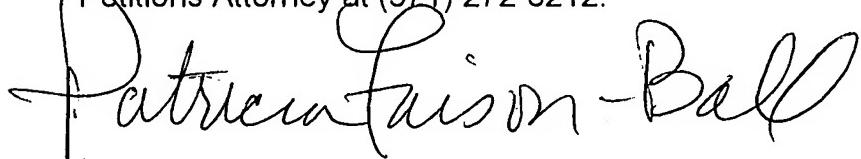
At the time the Notice to File Missing Parts was mailed the address of record for the instant application was associated with customer number 23492. However, on August 3, 2005, after the mailing of the Notice and the mailing of the Notice of Abandonment, a Revocation and Power of Attorney was mailed changing the address of record to that of customer number 41155. While there was a modification to the customer number address, it does not appear that the modification was made prior to the mailing of the Notice to File Missing Parts mailed on May 13, 2004 and thus the failure to respond to the office action based on a claim of non-receipt is not due to USPTO error but instead appears to be due to the proper address not having been properly communicated to the USPTO.

In the absence of petitioner showing that they acted responsibly with respect to providing the USPTO with the proper address of the instant application, the showing of record is therefore insufficient to warrant withdrawal of the holding of abandonment.

With respect to the petition to revive, the petition fee in the amount of \$1500.00 has been charged to deposit account no. 50-3118.

All other requirements under 37 CFR 1.137(b) having been met, this matter is being referred to the Office of Initial Patent Examination for further pre-examination processing.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
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Office of Petitions